IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.3673 OF 2006

Date of decision : 29.9.2006.

Pavittar Singh and another .....Appellants

versus

Parmatma Kaur and others .....Respondents

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Sarju Puri, Advocate for the appellants.

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ORDER

HEMANT GUPTA, J. (oral)

The defendants are in second appeal aggrieved against the judgment and decree passed by the First Appellant Court, whereby a suit filed by the plaintiff claiming the estate of Saggar Singh on the basis of registered Will dated 4.10.1995, was decreed in appeal.

One Saggar Singh, owner in possession of 1/4th share of the suit property died on 17.8.1988 in England while living with the plaintiff. The plaintiff propounded the registered Will dated 4.10.1995. Plaintiff No.1 is sister in-law of the deceased, whereas plaintiff Nos.2 & 3 are the nephews of said deceased Saggar Singh. The defendants are the brothers of the deceased Saggar Singh.

Though the learned trial Court has dismissed the suit while recording a finding that the Will is forged and fabricated document and is surrounded by suspicious circumstances, but the learned First Appellate Court has reversed the finding of the learned trial Court and held that

execution of the Will is proved from the testimony of Ashwani Kumar, regular deed writer as well as from the statement of attesting witnesses PW-3 & PW-4. The First Appellate Court has further held that the said Will was executed by Saggar Singh in sound disposing mind and that Saggar Singh had executed the said Will on account of services rendered by the plaintiff. On the other hand, it is also found that defendants are not in possession of any letter written by Saggar Singh to them from abroad and are not known whether they met Saggar Singh in 1995 in India. The Court has also taken into consideration the fact that the witness DW-1 Makhan Singh met Saggar Singh last time 15 years back and he is not in possession of any joint photograph with Saggar Singh during the entire life. No medical treatment was provided to him when Saggar Singh came to India. Thus, it was found that it is the plaintiff with whom Saggar Singh was residing and, therefore, for the services rendered by the plaintiff, Saggar Singh is proved to have bequeathed his estate to the plaintiff.

The learned counsel for the appellants has vehemently argued that Saggar Singh has suffered paralytic attack about 9 years prior to his death and from the testimony of PW-3 Hazura Singh, attesting witness, Saggar Singh used to speak with sign language and got scribed the Will and that such sign language was not understandable by him. It is thus sought to be argued that Saggar Singh cannot be said to be in possession of sound disposing mind and competent to execute Will.

In fact, from the perusal of statement of attesting witnesses, it would be apparent that Saggar Singh was in possession of disposing mind as he was communicating with the sign language. The fact that the attesting witness was not able to understand the said language which does not effect

the sound disposing mind of Saggar Singh. It is for the scribe to understand said language. The attesting witness is the witness of the signatures and not the contents of the Will. Therefore, on the basis of said statement, it cannot be said that Saggar Singh was not in sound disposing mind.

Learned First Appellate Court has discussed the entire evidence i.e. of scribe, the attesting witnesses, as well that of Surinder Singh, Sub Registrar. The learned First Appellate Court has recorded a confirm finding of fact that Saggar Singh is proved to have executed the Will dated 4.10.1995 and that the said Will is proved to be executed in sound disposing mind and is not surrounded by suspicious circumstances. It is not pointed out that any evidence has been misread or not taken into consideration .

Consequently, I do not find any illegality or irregularity in the finding recorded by the First Appellate Court which may raise any substantial question of law in the second appeal, for consideration of this Court.

Dismissed in limine.

(HEMANT GUPTA)
JUDGE

September 29, 2006.

**mohinder*